

7-1.100 Department of Justice Policy and Responsibilities

7-1.200 Notification to Targets

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The U.S. antitrust laws represent the legal embodiment of our nation's commitment to a free market economy in which the competitive process of the market ensures the most efficient allocation of our scarce resources and the maximization of consumer welfare. The Department of Justice is responsible for enforcing the federal antitrust laws, which essentially prohibit private restraints of trade (such as price fixing, bid rigging and other collusive arrangements among competitors) that unreasonably impede the free forces of the market. The Antitrust Division is responsible for coordinating the Department's antitrust enforcement and public policy advocacy efforts, and has jurisdiction for the statutes described in USAM 7-4.000, among others.

The Antitrust Division accomplishes its mission in two principal ways. First, as an enforcement agency, it prosecutes violations criminally and civilly, primarily under the Sherman and Clayton Acts. Second, it advocates competition before congressional committees and federal regulatory agencies, articulating pro-competitive solutions for economic problems. (The Division's competition advocacy functions are not treated in this Title, but are outlined in USAM 1-2.201).

The experience of the Antitrust Division and of many United States Attorneys' offices generally is that, in the course of investigations supervised by United States Attorneys' offices, it is not uncommon for those offices to obtain evidence of conduct that constitutes criminal antitrust violations. United States Attorneys' offices should watch for manifestations of price fixing, bid rigging, or other types of collusive conduct among competitors that might have the effect of allocating customers, restricting output, or raising price: such conduct would constitute a criminal violation of Section 1 of the Sherman Act. *See* AG Policy Statement in the Antitrust Resource Manual at 1. A United States Attorney with evidence of a possible antitrust violation should consult with the chief of the Antitrust Division field office with geographical responsibility for the United States Attorney's district, see USAM 7-3.700 or with that field office's designated liaison with the United States Attorney's district, to determine who should investigate and prosecute the case. Most antitrust investigations are conducted by the Antitrust Division's sections and field offices because they have specific expertise in particular industries and markets. In some cases, however, it may be more advantageous for the United States Attorney's office to investigate and prosecute a matter, particularly where localized price-fixing or bid-rigging conspiracies are involved, or where the antitrust violations are part of an overall course of criminal conduct being investigated by the United States Attorney's office. There may also be important mutual benefits to be derived in situations where a United States Attorney's office and the Antitrust Division can coordinate the prosecution and disposition of criminal matters that involve both antitrust offenses and other offenses.

The Antitrust Division, through the Deputy Assistant Attorney General for Criminal Enforcement, may refer antitrust investigations to a United States Attorney. Once a United States Attorney's office accepts a referral, it will be primarily responsible for the investigation and prosecution of that case.

Pursuant to 28 C.F.R. Sec. 0.40, all antitrust investigations, whether initiated by or referred to a United States Attorney, are subject to supervision by the Assistant Attorney General for the Antitrust Division. This ensures a consistent national policy on antitrust questions. Accordingly, the Division's approval is required at various stages of the investigation, as outlined in USAM 7-2.000 et. seq.

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The Antitrust Division follows the Department's general practice of informing individuals, under certain circumstances, that they are targets of an investigation and advising them of the opportunity to appear voluntarily before the grand jury. No similar opportunity to appear before the grand jury extends to corporate entities. However, the United States Attorney ordinarily should advise counsel for the corporate entities if indictment is being contemplated.

Counsel for corporate and individual targets of the investigation may request the opportunity to present arguments against indictment to the Deputy Assistant Attorney General for Criminal Enforcement or other Antitrust Division officials. Although counsel does not have any absolute right to be heard by the Deputy Assistant Attorney General for Criminal Enforcement, the Deputy, at his/her discretion, will ordinarily meet with counsel, but only after counsel has already met and discussed the issues with the United States Attorney. The United States Attorney will be notified in advance of all such meetings and may be present.